

50072

July 2, 1981

TO : M - Mr. Richard T. Kennedy
FROM : L - James H. Michel, Acting *JHM*
SUBJECT: Order of Succession as Acting Secretary of State

ANALYSIS OF ISSUES:

The President is authorized by law (5 U.S.C. 3347) to designate any confirmed officer to serve as Acting Secretary during a vacancy in the office or the absence or disability of the incumbent. A separate statute (5 U.S.C. 3345) provides that unless otherwise specified the second ranking official (i.e. the Deputy Secretary) serves in this capacity. The President's statutory authority to designate an order of succession can be delegated under authority of 3 U.S.C. 301.

In 1959, President Eisenhower signed Executive Order 10839, establishing an order of succession as Acting Secretary of State (Tab 2). Because of a number of changes in the number and titles of the Department's statutory officers in the intervening years that order has become obsolete. In November 1980 an updated order was submitted to OMB, but OMB deferred action and invited resubmission by the new Administration.

At Tab 1 is a proposed letter to the Director of OMB that would transmit a draft of a new Executive Order on this subject. The proposed new order would apply only during the absence, disability or vacancy in office of both the Secretary and the Deputy Secretary. In that event, the order of succession would be one that the Secretary had established from among the Department's confirmed statutory officers. (We would submit an order of succession designation to the Secretary, through you, after the new order was signed.) If no designation were in effect, the order of succession would be --

DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY [Signature] DATE 5/20/01

REF ID: A68573

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Dear Mr. Stockman:

Secretaries to fourteen. (See Public Law 95-426, §109(c).) In 1978, Public Law 95-426 changed the title of Deputy Under Secretary of State for Management to Under Secretary. (See Public Law 95-426 §114.) The Counselor and Legal Adviser continue to rank equally with the Assistant Secretaries. (See 22 U.S.C. 2353(a).)

The proposed new Order would permit the Secretary of State to designate any confirmed officer of the Department in an order of succession, and would establish an order of succession that would apply in the absence of such a designation. This proposal would be consistent with the changes in the statutory offices which have been made in recent years, as described above.

The proposed Order states that the President retains the right under 5 U.S.C. 3347 to direct that an officer specified by him shall act as Secretary of State notwithstanding this proposed Order or any designation approved thereunder by the Secretary of State.

We hope that the necessary interagency coordination can be completed and the proposed Order submitted in final form to the President at an early date.

Sincerely,

James H. Michael
Acting Legal Adviser

Enclosure:

Proposed Executive Order.

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03/13/80

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Executive Order

Designation of Certain Officers to Act as Secretary
of State

By virtue of the authority vested in me by section 3347
of title 5 and section 301 of title 3 of the United States
Code, and as President of the United States, I am ordered as
follows:

Section 1. During any period when, by reason of absence,
disability, or vacancy in office, neither the Secretary of State
nor his Deputy Secretary is available to exercise the powers or
perform the duties of the office of the Secretary, an officer
from the Department of State who has been appointed by the
President by and with the advice and consent of the Senate, in
such order as the Secretary of State may from time to time pre-
scribe, shall act as Secretary until the absence or the disabili-
ty of the incumbent Secretary or Deputy Secretary shall cease,
or until a successor is appointed. If no such order of succes-
sion is in effect at that time, then such officers shall act as
Secretary in the descending order of rank, as established by
their offices being provided for in sections 5314 or 5315 of
title 5 of the United States Code, in the order which they shall
have taken the oath as such officers at each level of the Execu-
tive Schedule.

Section 2. The President may at any time in pursuance of
law but without regard to the foregoing provisions of this Order
direct that an officer specified by the President shall act as
Secretary of State.

Section 3: Executive Order 10839, September 30, 1959
(24 F.R. 7939) is revoked.

6/25/61

Executive Order 10530

U.S. GOVERNMENT PRINTING OFFICE: 1954

1. In the absence of the President of the United States, the Vice President of the United States, the Speaker of the House of Representatives, and the President of the Senate, it is ordered as follows:

In case of the death, resignation, absence, or sickness of the Secretary of State, and in the absence of the Under Secretary of State, the following order of succession shall, in the order of succession indicated, act as Secretary of State until a successor is appointed or until the absence or sickness of the incumbent shall cease:

1. Under Secretary of State for Political Affairs or Under Secretary of State for Economic Affairs, as may be designated by the President pursuant to the act of July 26, 1940, as amended.

2. Deputy Under Secretaries of State. (a) in such order of succession as the Secretary of State (or the Under Secretary of State when acting as Secretary) may by order designate from time to time, or (b) if no such designation order is in effect at the time, in the order of the lengths of service as Deputy Under Secretaries.

3. Assistant Secretaries of State. (a) in such order of succession as the Secretary of State (or the Under Secretary of State when acting as Secretary) may by order designate from time to time, or (b) if no such designation order is in effect at the time, in the order of the lengths of service as Assistant Secretaries.

The President may, in his discretion, designate any other officer of the Department of State to act as Secretary of State in the absence of the Secretary of State, the Under Secretary of State, or any of the Deputy Under Secretaries or Assistant Secretaries.

Done at the City of Washington, D.C., this 11th day of July, 1954.

THE PRESIDENT

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Executive Order 11822

December 10, 1972

**Designation of Certain Officers To Act as Secretary
of the Treasury**

By virtue of the authority vested in me by section 5317 of title 31, United States Code, and section 501 of title 5 of the United States Code, and in the absence of the Secretary of the Treasury, it is ordered as follows:

Section 1. During my absence from the office of Secretary of the Treasury or my absence in office, either the Secretary of the Treasury or the Secretary of the Treasury is not available to exercise the powers or perform the duties of the office of Secretary, an officer from the Department of the Treasury appointed by the President, by and with the advice and consent of the Senate, in such order as the Secretary of the Treasury may from time to time prescribe, shall act as Secretary until the President or the Secretary of the Treasury shall order, or until a successor is appointed. If no order of succession is in effect at that time, then an officer shall act as Secretary in the descending order of rank as established by their names being listed in sections 5314, 5315 or 5316 of title 31 of the United States Code, and, at each level of the Executive Schedule in the event they shall have taken the oath as such officers.

Section 2. Executive Order No. 11630 of August 21, 1972, entitled "Designation of Certain Officers to Act as Secretary of the Treasury", is hereby revoked.

Gerald R. Ford

The White House,

December 10, 1972.

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